

## **REMARKS**

Claims 1, 3-7, 10-15, 18-21, 23-27, and 29-36 are all the claims pending in the application. Claims 1, 3-7, 10-15, 18-27, and 29-36 are rejected under 35 USC §101; and, claims 1, 3-7, 10-15, 18-21, 23-27, and 29-36 stand rejected on prior art grounds. Applicants respectfully traverse the rejections based on the following discussion.

### **I. 35 USC §101 Rejections**

Claims 1, 3-7, 10-11, 12-15, 18-21, and 31-34 are rejected under 35 USC §101 because the Examiner asserts that they recite mental steps that are not tied to a statutory category such as a machine or manufacture. Applicants traverse the rejections because the amended claims are tied to a particular machine (i.e., the resource allocator); and as such, the claims are directed to statutory subject matter under 35 USC §101.

More specifically, independent claim 1 recites “automatically allocating the computing resources from a resource allocator”. Independent claims 12 and 21 recite “invoking an automatic hardware allocation utility of a resource allocator” and “a resource allocator analyzes the collected performance data”, respectively<sup>1</sup>.

The Court of Appeals for the Federal Circuit has held that “an applicant may show that a process claim satisfies 35 U.S.C.S. § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article”. *In re*

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<sup>1</sup> Based on the telephonic Examiner Interview on March 10, 2009 in connection with the Office Action mailed on January 13, 2009, the undersigned understood that tying at least one of the method steps to a particular machine would satisfy the requirements under 35 U.S.C. §101.

*Bilski*, 545 F.3d 943, 961 (Fed. Cir. 2008). “[A] claim that purportedly lacks any ‘physical steps’ but is still tied to a machine or achieves an eligible transformation passes muster under §101”. *Id.* As described in paragraph [0027] of Applicants’ application, FIG. 2 is a block diagram illustrating a high-level architecture of system 10. System 10 includes a performance agent 205, a resource allocator 210, a resource identification algorithm 215, and a collection database 220 (also referenced herein as collection dB 220). The performance agent 205 is installed on the computing resource of the user such as computers 20, 25, 30. The resource allocator 210, the resource identification algorithm 215, and the collection dB 220 are installed on the server 15.

Accordingly, Applicants submit that independent claims 1, 12, and 21 are tied to a particular machine (i.e., the resource allocator 210 on the server 15, and the performance agent 205 on the computers 20, 25, 30); and as such, independent claims 1, 12, and 21, and their respective dependent claims, are directed to statutory subject matter under 35 USC §101. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejection.

## **II. The Prior Art Rejection**

Claims 1, 3-7, 10-11, 21-27, 29-32, and 35-36 are rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over U.S. Patent Publication No. 2002/0165892 to Grumann et al. (hereinafter referred to as “Grumann”) in view of U.S. Patent No. 6,966,033 to Gasser et al. (hereinafter referred to as “Gasser”) and U.S. Patent No.

5,247,687 to Eilert et al. (hereinafter referred to as “Eilert”). Claim 12 is rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over U.S. Patent Publication No. 2004/0117476 to Steele et al. (hereinafter referred to as “Steele”) in view of Gasser. Claims 13-15, 18-20, and 33-34 are rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Steele in view of Gasser and Eilert. Applicants respectfully traverse the rejections.

**A. The Rejections Based on Grumann in view of Gasser and Eilert  
(claims 1, 3-7, 10-11, 21-27, 29-32, and 35-36)**

Independent claims 1 and 21 recite applying “a plurality of metrics including a job description and job level of a user to filter the collected performance data”. The Office Action states that “Grumann does not explicitly teach applying a plurality of metrics including a job description and job level of a user” (Office Action, p. 4, item 5). However, the Office Action cites Gasser to argue that such features are taught by the art of record (Office Action, p. 4, item 5).

More specifically, the Office Action argues that the “task categories” of Gasser teach the “job descriptions ... of a user” of the claimed invention (Office Action, p. 4, item 5). Applicants traverse the rejections and submit that the “task categories” of Gasser do not teach the “job descriptions ... of a user” of the claimed invention; and, the “task categories” of Gasser are not utilized to filter performance data.

The “task categories” of Gasser do not provide a description of a user’s job. Instead, Gasser’s “task categories” describe different functions or operations that can be performed by computer resources, for example, data protection tasks, monitoring tasks, and storage location tasks (Gasser, col. 15, lines 11 - 32). In other words, Gasser’s “task categories” provide a description of the tasks to be carried out by a computer system, and do not provide a description of the job of a person using the computer system.

Furthermore, the “task categories” of Gasser are not utilized to filter performance data. Instead, the “task categories” of Gasser are utilized to group “resource tasks” (i.e., functions or operations that can be performed by computer resources) by categories, for example, data protection tasks, monitoring tasks, and storage location tasks.

Applicants submit that nothing within Gasser discloses filtering performance data based on a job description of a user as defined in independent claims 1 and 21. Instead, Gasser filters “computer resources” based on “performance data”. For example, as described in col. 30, lines 7 - 10 of Gasser, the user filters data storage systems (i.e., an exemplary computer resource) displayed on a user interface to only display those data storage systems that have a low performance rating, or that have less than 20 Gigabytes of disk space remaining.

In addition, the Office Action argues that the “systems management operation” of Gasser teaches the “job level of a user” of the claimed invention (Office Action, p. 4, item 5).

For instance, the Office Action argues that Gasser discloses that a user may select a “high-level systems management operation” to be applied to a host computer system (Office Action, p. 4, item 5 (citing Gasser, col. 29, lines 61 - 65)).

Applicants submit that nothing within Gasser, including the portions cited by the Office Action, mentions the “job level of a user” (independent claims 1 and 21). The portion of Gasser cited by the Office Action describes a system management operation (e.g., reset or group of devices within a system) that is classified as “high-level”; however, the cited portion of Gasser is totally unrelated to the “job level of a user”.

Furthermore, Applicants submit that nothing within Eilert mentions the job description or job level of a user. The Office Action does not assert that Eilert teaches applying “a plurality of metrics including a job description and job level of a user to filter the collected performance data” as recited in independent claims 1 and 21. Instead, Eilert is only cited by the Office Action for the mere purpose of allegedly illustrating performance data including a time percentage in which a computing resource is engaged in excessive paging activity (Office Action, p. 5, item 7).

Accordingly, Applicants submit that the art of record fails to teach filtering performance data based on the job description or job level of a user. Instead, Gasser filters “computer resources” based on “performance data” (e.g., filtering data storage systems based on disk space). Nothing within Gasser, including the portions cited by the Office Action, mentions the “job level of a user”. Moreover, Gasser’s “task categories”

(which the Office Action asserts teaches the “job description” of the claimed invention) describe tasks to be carried out by a computer system, and do not describe the job of a person using the computer system. Therefore, it is Applicants’ position that the art of record fails to teach the claimed features of applying “a plurality of metrics including a job description and job level of a user to filter the collected performance data” as defined in independent claims 1 and 21.

**B. The Rejections Based on Steele in view of Gasser (claim 12)**

Independent claim 12 recites “correlating the first set of metrics and the second set of metrics with a user’s job description and job level”. The Office Action states that “Steele does not explicitly teach correlating the metrics with a user’s job description and job level” (Office Action, p. 9, item 19). However, the Office Action cites Gasser to argue that such features are taught by the art of record (Office Action, p. 9, item 19).

As described more fully above in Section A, nothing within Gasser, including the portions cited by the Office Action, mentions the “job level of a user”. The portion of Gasser cited by the Office Action describes a system management operation (e.g., reset or group of devices within a system) that is classified as “high-level”; however, the cited portion of Gasser is totally unrelated to the “job level of a user”. Moreover, Gasser’s “task categories” (which the Office Action asserts teaches the “job description” of the claimed invention) describe tasks to be carried out by a computer system, and do not describe the job of a person using the computer system. Therefore, it is Applicants’

position that the art of record fails to teach “correlating the first set of metrics and the second set of metrics with a user’s job description and job level” as defined in independent claim 12.

**C. The Rejections Based on Steele in view of Gasser and Eilert (claims 13-15, 18-20, and 33-34)**

As more fully described above in Section B, it is Applicants’ position that the proposed combination of Steele and Gasser does not render obvious independent claim 12 and similarly does not render obvious dependent claims 13-15, 18-20, and 33-34.

With respect to Eilert, Applicants submit that nothing within Eilert mentions the job description or job level of a user. The Office Action does not assert that Eilert teaches applying “correlating the first set of metrics and the second set of metrics with a user’s job description and job level” as defined in independent claim 12. Instead, Eilert is only cited by the Office Action for the mere purpose of allegedly illustrating performance data including a time percentage in which a computing resource is engaged in excessive paging activity (Office Action, p. 5, item 7). Therefore, it is Applicants’ position that the proposed combination of Steele, Gasser, and Eilert does not render obvious independent claim 12 and similarly does not render obvious dependent claims 13-15, 18-20, and 33-34.

Therefore, it is Applicants’ position that the art of record does not teach many features defined by independent claims 1, 12, and 21 and that such claims are patentable

over the prior art of record. Further, it is Applicants' position that dependent claims 3-7, 10-11, 13-15, 18-20, 23-27, and 29-36 are similarly patentable, not only because of their dependency from a patentable independent claims, but also because of the additional features of the invention they recite. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections.

### **III. Formal Matters and Conclusion**

In view of the foregoing, Applicants submit that claims 1, 3-7, 10-15, 18-21, 23-27, and 29-36, all the claims presently pending in the application, are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary.

Respectfully Submitted,

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